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No. 08-1006

Supreme Court, U.S.

FILED

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## SUPREME COURT OF THE UNITED STATES

Shantee MAHARAJ, individually  
and as executrix of the estate of D. Dev MONGA  
Petitioner

v.

Scott E. SOMMER, executor of the estate of Paul F.  
SOMMER; John C. OTTENBERG, Esq.,  
receiver of D. Dev Monga, Core Environmental  
Resources, Inc., and Subsurface Technologies, Inc.;  
VANGUARD Fiduciary Trust Company;  
VANGUARD/MORGAN Growth Fund, Inc.; Dreyfus  
FOUNDERS Funds, Inc.; CITADEL Service Co., Inc.;  
and INVESTORS Fiduciary Trust Company  
Respondents

On Petition for a Writ of Certiorari to the  
Supreme Judicial Court for the  
Commonwealth of Massachusetts

## REPLY IN SUPPORT OF MAHARAJ PETITION

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## REPLY IN SUPPORT OF MAHARAJ PETITION

### **A. Sommer's Brief Invents Reasons to Oppose the Petition for a Writ of Certiorari**

Sommer's Opposition Brief<sup>1</sup> invents reasons which, as a practical matter, serve to show why this Court should grant Maharaj's certiorari petition.

#### **1. Waiver.**

Sommer's "waiver" theory, (that Maharaj or Monga waived their claims to the IRAs), is belied by the record: Until 1998, the Funds, Monga, Maharaj, as well as the Receiver all sought to have the IRAs' validity decided, and the Superior Court's actions led everyone to expect that such a determination would be made. Suddenly, in 1998, the Receiver submitted a new forfeiture theory which the Court accepted: As penalty for Monga's alleged conduct before he died in 1996, the Superior Court declared that Monga had "forfeited" his rights to the IRAs.

Sommer's effort now to reinvent what occurred below is an attempt to divert attention from what the Appeals Court held: In peremptorily deciding that Monga's "forfeiture" entailed his spouse losing her rights to the IRAs, the Superior Court denied

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<sup>1</sup> Maharaj received Sommer's Brief in Opposition on Thursday afternoon April 16, 2009. An earlier Reply was filed on behalf of Maharaj, dated April 17, with a grammatical error corrected in this April 20 version.

Maharaj her right to a hearing in accordance with the Due Process clause, as interpreted by *Degen*.

Reversing the Appeals Court, the SJC explicitly affirmed the Superior Court's forfeiture basis of decision. No mention of any waiver theory appears in the SJC opinion, in part because Sommer's written and oral submissions never suggested that Maharaj had waived her claims to the IRAs.

### **2. *Degen, Guidry, Patterson, Rousey.***

Sommer attempts to distinguish *Degen, Guidry, Patterson, Rousey* by essentially relying on the same waiver theory. The record speaks for itself: The SJC chose to adopt a *post mortem* forfeiture declaration lacking any precedential support. Sommer's effort in this Court to alter the basis of the SJC's decision suggests both that the SJC's rationale cannot be defended, and that the SJC's decision conflicts with this Court's jurisprudence.

### **3. The facts.**

Almost all of Sommer's significant factual assertions likewise distort the record.<sup>2</sup> Sommer's Opposition Brief neither tries to dispute Maharaj's extensive record references, nor to submit others, an omission which speaks for itself.

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<sup>2</sup> As well as some lesser significant, but nonetheless false ones, such as the assertion at the outset, 4th line of Sommer's Opposition Brief, that Maharaj was a judgment debtor.

Sommer's characterization of this case as factually singular is hard to fathom: Nothing is more mundane than accusations of fraudulent conveyances intended to avoid paying creditors. Sommer's allegations of this nature against Monga, and his receivership strategy, worked to liquidate Monga's businesses while Monga's appeal of the judgment was pending, (thus ridding him of his main business competition long before the judgment might have been set aside).

#### **4. Why this Court should grant certiorari.**

While Monga's death leaves unresolved the legality of his debt to Sommer, what survives is the legality of stripping Maharaj of her rights to the IRAs.

What this case illustrates, (and Sommer's Opposition underscores), is the ease with which procedural innovations, under the banner of equity, can serve to deprive this Court's jurisprudence of any practical effect. If allowed to stand, the SJC decision will serve as a blueprint for avoiding Congressional will and this Court's authority.

#### **B. Errata.**

Maharaj takes this opportunity to request correction of the following three errors in her Petition:

- Page 35, second paragraph, line 3: the first word should be "*Rousey*" instead of "*Guidry*";
- Page 35, second paragraph, line 4: the first word should be "*Rousey*" instead of "*Guidry*";

- Page 38, footnote 38, line 5: the word "Anderson" should be "Atkins".

## CONCLUSION

For the above-stated reasons, Maharaj prays this Honorable Court to grant the instant Petition for a Writ of Certiorari.

Respectfully submitted,

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